

**Child, Carey**

**From:** Andy Tyler [ATyler@dominion-ic.co.uk]  
**Sent:** Wednesday, January 30, 2008 11:34 AM  
**To:** Child, Carey  
**Subject:** FW: Lloyd's Underwriters represented by Resolute / Citizens Casualty / Dominion  
**Categories:** Dominion/Equitas 15531.008

FYI

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**From:** Piller, Chris [mailto:Chris.Piller@resmsl.co.uk]  
**Sent:** 30 January 2008 16:01  
**To:** Andy Tyler  
**Subject:** FW: Lloyd's Underwriters represented by Resolute / Citizens Casualty / Dominion

Andy,

Glenn, Karen and I have spoken about your most recent e-mail. We understand your frustration, but you should understand ours as well.

We don't intend to revisit all our recent efforts to resolve these losses, most of which arose decades ago and many of which could have been presented within months or years of the assignment rather than a decade later. We want to assure you that we are moving as quickly as we can to satisfy both our concerns and yours. We, however, don't want any further misunderstandings about what Resolute Management promised to do and what Dominion promised to do during this process.

At our meeting with Simon and you on January 11th, we understood that Dominion would provide us with information that would help us to determine the extent of the liquidator's assignment. Wasn't that the purpose of our exchanging information? We provided you with our workbooks on these claims and you told us you were reviewing them. That meant — at least to us -- that you were coming back to us with information to help adjust the subject losses.

After our meeting, you asked that we waive any conflict with Chadbourne & Parke, a waiver that we certainly did not have to grant. You told us that a waiver would help us communicate with lawyers — Chadbourne - that had information about the assignment and how it operated. On that basis, we allowed the waiver. Now it seems that Dominion does not want to provide us with any information (either from its records or from Chadbourne's records). Without the additional information requested, our counsel's opinion cannot be black and white. We thought that we are working towards a voluntary exchange of information, e.g., our providing our workbooks and your providing materials relevant to the assignment, materials that only you may possess.

A couple of items have to be clarified now:

- we did not promise a legal opinion by the end of the week of January 11th. We told you that we would expedite that opinion and we have. But we also made clear at the January 11th meeting that we would use the additional information you were to supply to assist in obtaining an opinion.
- we did advise that if the assignment issues were resolved, Resolute would arrange for payment subject to our earlier agreement
- in your January 28th e-mail, you state that if our advisor "raises issues with the scope of the assignment we are willing to instruct Mr. Child to discuss those issues on a without prejudice basis with your counsel . . . "

Our counsel wrote to Chadbourne on January 28th, asking for specific information concerning the assignment. That information directly bears on the opinion we are seeking and we are awaiting a response.

Andy, we share the same goal: a resolution of these losses and that requires an understanding of the assignment and advice with respect to it. Let's keep moving towards that goal.

Kind regards

cdp

-----Original Message-----

**From:** Andy Tyler [mailto:ATyler@dominion-ic.co.uk]  
**Sent:** 28 January 2008 16:29  
**To:** Piller, Chris  
**Cc:** Brace, Glenn; Simon Janes; Child, Carey  
**Subject:** RE: Lloyd's Underwriters represented by Resolute / Citizens Casualty / Dominion

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1. We met with Karen and yourself on September 07, at that time you stated that you were obtaining legal advice.
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assignment..

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Now you appear to state that you still do not have an opinion and would like us to help your council come to a decision on whether you pay us or not, going so far as to ask us to provide the basic documentation of the scope of the assignment, the documentation that presumably formed the basis for your raising the issue in the first place..

What we will agree to do is the following:

If your legal opinion raises issues with the scope of the assignment we are willing to instruct Mr Child to discuss those issues on a without prejudice basis with your counsell in a last attempt to avert legal costs.

Obviously if your legal opinion finds there is not a cap, we expect to be paid in full for those claims agreed by your claims handlers.

We would appreciate your response by the end of this week.

Regards

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**From:** Piller, Chris [mailto:Chris.Piller@resmsl.co.uk]

**Sent:** 25 January 2008 17:13

**To:** Andy Tyler

**Cc:** Brace, Glenn; Simon Janes; Child, Carey

**Subject:** RE: Lloyd's Underwriters represented by Resolute / Citizens Casualty / Dominion

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As I identified in my e mail below, information that either you and/or Chadournes have which will specifically point to the scope of the liquidator's assignment, will assist our counsel's opinion. We have advised our counsel of the contact name and Chadournes will be contacted to provide this as soon as possible so that we can factor this in and have the opinion finalised.

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-----Original Message-----

**From:** Andy Tyler [mailto:ATyler@dominion-ic.co.uk]

**Sent:** 24 January 2008 17:52

**To:** Piller, Chris

**Cc:** Brace, Glenn; Simon Janes; Child, Carey

**Subject:** RE: Lloyd's Underwriters represented by Resolute / Citizens Casualty / Dominion

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I presume you must have your opinion now and obviously we would hope that you now agree to pay all of the claims agreed to date..

If you are not ready to pay and you have a legal position to put forward we are comfortable for your lawyer to discuss this with Chadbourne on a without prejudice basis..

The lawyer to contact is Carey Child in Washington

Regards

Andy

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**From:** Piller, Chris [mailto:Chris.Piller@resmsl.co.uk]

**Sent:** 23 January 2008 10:14

**To:** Andy Tyler

**Subject:** Lloyd's Underwriters represented by Resolute / Citizens Casualty / Dominion

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Please see the attached re Waiver. Obviously as we have said in our meetings , any information that either you or Chadournes have that can be supplied to us / our counsel on the scope of the liquidators assignment, can only help inform our counsel's opinion. Please expedite accordingly.

Kind regards

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<<Lloyd's Underwriters represented by Resolute / Citizens Casualty / Dominion - Waiver>>

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# **EQUITAS**



EQUITAS LIMITED

EQUITAS CLAIMS UNIT DASHWOOD HOUSE 69 OLD BROAD STREET LONDON EC2M 1NU  
TEL: 0171 342 2000 FAX: 0171 342 2100

To Co-insurers

Re: Agency Managers  
Citizen Casualty (Liquidation)  
Liquidators plan to expedite.

Citizens Casualty has been in liquidation since 1971 and now the liquidator wants to wind up the estate.

Mendes and Mount have been asked to review the latest developments. Their reports in this regard are enclosed along with copies of the notice from the liquidator and a handout from BD Cook, obtained during a leaders meeting.

Should any of our co insurers have any queries, please contact the undersigned.

Yours truly

Mark Messent

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X

In the Matter of the Arbitration Between  
NATIONWIDE MUTUAL INSURANCE COMPANY,

Index No.:

Petitioner,

**PETITION TO  
STAY ARBITRATION**

and

B.D. COOKE & PARTNERS LTD. AS ASSIGNEE OF  
CITIZENS CASUALTY COMPANY OF NEW YORK  
(IN LIQUIDATION),

Respondent.

-----X

Petitioner Nationwide Mutual Insurance Company (“Nationwide”) alleges the following  
upon information and belief by its attorneys, Rubin, Fiorella & Friedman, LLP:

The Parties

1. Nationwide is an insurance company organized under the laws of the State of Ohio which maintains a principal place of business in Columbus, Ohio. Nationwide is duly admitted as a property and casualty insurer in the State of New York.
  
2. Respondent B.D. Cooke & Partners Ltd. (“Cooke”) is organized under the laws of the United Kingdom and maintains a principal place of business in London, England. Cooke is in the business of insurance/reinsurance and has done insurance business in the State of New York.

Jurisdiction

3. This Court has jurisdiction of this Petition pursuant to CPLR Article 75 and the Corrected Order of this Court dated March 6, 1997 (the "Order") and the Petition of Edward J. Muhl for approval of the Plan to Expedite the Closing of Citizens Casualty Company of New York (the "1996 Petition") which is incorporated by reference in the Order. Copies of the Order and the 1996 Petition are Exhibits B and D to the accompanying Affidavit of Mark C. Kareken, Esq. (the "Kareken Aff.").

Venue

4. Venue is proper pursuant to CPLR 7502(a) since New York City is the location of the arbitration demanded by Cooke and sought to be stayed by Nationwide.

First Cause of Action

5. Nationwide repeats and realleges above paragraphs 1 through 4 hereto as if set forth in full.

6. By letter dated December 26, 2001 (the "Arbitration Demand"), Cooke demanded arbitration against Nationwide with respect to reinsurance reimbursement purportedly due Cooke, by reason of an Assignment of certain rights dated June 25, 1997 (the "Assignment")

from the Liquidator of Citizens Casualty Company of New York ("Citizens"). Copies of the Arbitration Demand and the Assignment are Exhibits A and C to the Kareken Aff.

7. Nationwide has not participated in the arbitration sought by Cooke.

8. Nationwide has neither made nor received an application to compel arbitration.

9. None of the agreements cited in the Arbitration Demand is between Nationwide and Cooke or between Nationwide and Citizens, the assignor of Cooke.

10. None of the three purported arbitration provisions cited or quoted in the Arbitration Demand require Nationwide to arbitrate any dispute with Cooke or with Citizens, the assignor of Cooke.

11. By reason of the foregoing, Nationwide is entitled to a stay of arbitration under CPLR 7503(b), on the ground that Cooke has not identified any valid agreement which requires Nationwide to arbitrate the underlying dispute in this proceeding.

Second Cause of Action

12. Nationwide repeats and realleges above paragraphs 1 through 4 and 6 through 10 as if set forth in full.

13. Even if there were an applicable arbitration provision with respect to the parties and the underlying dispute in this proceeding, Cooke would still not be entitled to demand arbitration because this Court has continuing jurisdiction over this dispute.

14. Any arguable right of Cooke to seek arbitration against Nationwide results from the Assignment of certain rights of Citizens by the Liquidator of Citizens pursuant to the Assignment. A copy of the Assignment is Exhibit C to the Kareken Aff.

15. The Assignment states that it is subject to the Order:

This assignment is authorized by and subject to the Order of the Honorable Edward Greenfield, Justice of the Supreme Court, New York County, dated February 11, 1997 (Index No. 40357/71 as corrected March 6, 1997. The meaning of the terms and provisions of this assignment shall have the same meaning as contained in the Petition and Plan set forth in the Petition verified on October 11, 1996. [Emphasis added].

Exhibit C to the Kareken Aff. at 3.

16. The Order states in relevant part:

IT IS ORDERED THAT:

1. The Petition is granted;
2. The Plan is approved;
3. In accordance with the Plan:

\* \* \*

(d) the Liquidator's assignment to the B.D. Cooke Poole of the  
reinsurance due to Citizens is approved in the manner described in the  
Petition. [Emphasis added].

Exhibit B to the Kareken Aff. at page 3.

17. The 1996 Petition states, among other things, that:

The order approving the Petition shall also provide that the  
Supreme Court of the State of New York, New York County, shall  
have continuing jurisdiction over any disputes concerning the  
assignments and transfers described above and their effect, except  
said Court shall not resolve disputes solely involving computations  
of amounts due thereunder. The Liquidator shall not be a  
necessary party in any such future proceeding. [Emphasis added].

Exhibit D to the Kareken Aff. §19(e) at page 12.

18. The instant dispute involves, among other things, the meaning and effect of the  
Assignment and its effect upon the various contractual obligations and defenses of Cooke and  
Nationwide.

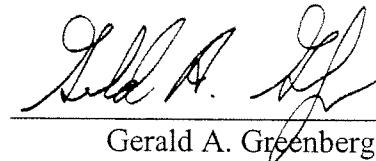
19. By reason of the foregoing, Nationwide is entitled to a stay of the arbitration sought by Nationwide on the ground that this Court has jurisdiction of the instant dispute.

**WHEREFORE**, Petitioner Nationwide asks that an order and judgment be entered staying the arbitration sought by Respondent Cooke and granting Nationwide the costs and disbursements of this proceeding and such other and further relief as may be just and equitable.

Dated: New York, New York  
January 15, 2001

RUBIN, FIORELLA & FRIEDMAN, LLP

By:




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Gerald A. Greenberger

Attorneys for Petitioner Nationwide  
Mutual Insurance Company  
90 Park Avenue, 19th Floor  
New York, New York 10016  
(212) 953-2381

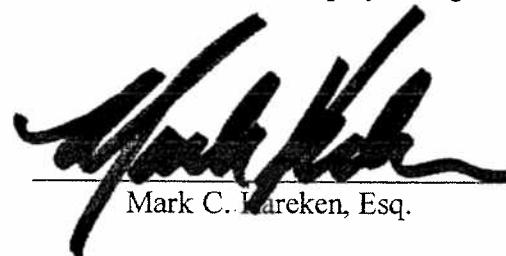
TO: CHADBOURNE & PARK LLP  
Attorneys for Respondent  
B.D. Cooke & Partners Ltd.  
as Assignee of Citizens Casualty  
Company of New York (In Liquidation)  
1200 New Hampshire Avenue NW  
Washington, D.C. 20036

STATE OF WISCONSIN      )  
                                  ) ss.:  
CITY OF WAUSAU      )

MARK C. KAREKEN, ESQ., being duly sworn, deposes and says:

That he is Claims Counsel to Petitioner Nationwide Mutual Insurance Company ("Nationwide"), that he has read the foregoing Verified Petition and knows the contents thereof, and that the same is true to his own knowledge except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it be true.

Deponent further says that the sources of his information and the grounds of his belief as to the matters stated in said Verified Petition to be alleged upon information and belief are records, books and papers of Nationwide and communications made to deponent by officers, employees, agents and attorneys of Nationwide.



Mark C. Kareken, Esq.

Sworn to before me this  
15<sup>th</sup> day of January 2002

Linda L. DeBordleben  
Notary Public

CHADBOURNE  
& PARKE LLP

1200 New Hampshire Avenue NW, Washington, DC 20036

tel 202-974-5600 fax 202-974-5602

Carey G. Child  
direct tel 202-974-5730 fax 202-974-6930  
cchild@chadbourne.com

January 18, 2002

## By Facsimile

Gerald A. Greenberger, Esq.  
Rubin, Fiorella & Friedman LLP  
90 Park Avenue  
19th Floor  
New York, NY 10016

Re: Arbitration Between B.D. Cooke & Partners Ltd and Nationwide Mutual Ins. Co., AAA Arbitration No. 50 T 195 00006 2 (The "AAA Arbitration")

Nationwide Mutual Insurance Co. v. B.D. Cooke & Partners Ltd., Index No. 02/101043 (The "Special Proceeding")

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Dear Gerry:

This sets forth the proposal we have discussed regarding the above-referenced matters.

1. The parties agree that the AAA Arbitration shall be stayed until and including February 19, 2002. The parties will instruct the AAA that no action whatsoever, including but not limited to the selection of arbitrators, is to be taken in the AAA Arbitration before February 20, 2002. I will advise the AAA in writing of this agreement and instruction on behalf of both parties.
2. The parties agree that the Special Proceeding is stayed until and including February 19, 2002. The parties further agree that the return date of the Notice and Petition To Stay Arbitration filed therein is adjourned until and including February 19, 2002.
3. Nationwide has represented that no Request For Judicial Intervention has been filed in the Special Proceeding, and B.D. Cooke accepts and relies upon that representation. Nationwide agrees that it shall not file a Request For Judicial Intervention in the Special Proceeding before February 20, 2002.
4. B.D. Cooke will file and serve a complaint in the Supreme Court of the State of New York for New York County on or before February 19, 2002

CHADBOURNE  
& PARKE LLP

Gerald A. Greenberger, Esq.

-2-

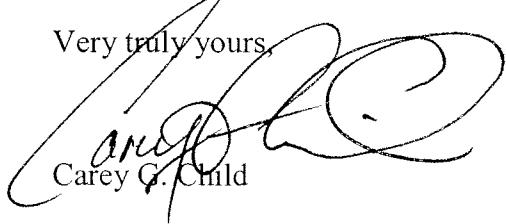
January 18, 2002

(the "New Action"). B.D. Cooke will endeavor to have the New Action assigned to the Commercial Part and Nationwide will assist in that effort as needed. Rubin, Fiorella & Friedman LLP is authorized to accept, and will accept, service of the New Action on behalf of Nationwide.

5. Upon the filing of the New Action, B.D. Cooke will withdraw without prejudice its demand for arbitration in the AAA Arbitration, with each party to bear its own costs.
6. Upon the filing of the New Action, Nationwide will dismiss the Special Proceeding without prejudice, with each party to bear its own costs.
7. Other than the New Action, neither party will commence or file any other action, proceeding, or arbitration regarding the subject matter of the AAA Arbitration or the Special Proceeding before February 20, 2002.

If these terms are acceptable, please indicate your agreement by countersigning in the space provided below, with a copy to me by return facsimile.

Very truly yours,

  
Carey G. Child

Agreed:

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Gerald A. Greenberger  
on behalf of Nationwide Mutual Insurance Company